



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

28

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/609,166

07/03/00

BERKE

M

P-3627-2

MYRON AMER P C
114 OLD COUNTRY ROAD
SUITE 310
MINEOLA NY 11501

QM32/1023

EXAMINER

YU, J

ART UNIT

PAPER NUMBER

3764

DATE MAILED:

10/23/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory ActionApplication No.
09/609,166Applicant(s)
BerkeExaminer
Justine YuArt Unit
3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Oct 9, 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The ^{argument} proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search. (See NOTE below);
- (b) ☐ they raise the issue of new matter. (See NOTE below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____

4. ☐ Applicant's reply has overcome the following rejection(s): _____

5. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claim(s).

6. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____

7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1

9. ☐ The proposed drawing correction filed on _____ a) ☐ has b) ☐ has not been approved by the Examiner.

10. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

11. ☒ Other: See attached paper

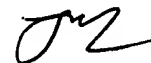
JUSTINE R. YU
PRIMARY EXAMINER

Art Unit: 3764

1. Applicant's requesting for reconsideration filed 10/9/01 of the refusal to enter the proposed amended claim 1 is acknowledged. However, since the newly added limitations in the proposed amended claim 1 such as: "using as a massaging device a construction comprising a base, a plurality of semi-spherical configurations extending from one side of said base, and a vertical notch in said base having walls bounding a positioning recess therebetween" and "having projected in said positioning recess a vertical strip" raised new issues which would require further search and consideration. Therefore, the denial of entry the proposed amendment is proper.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justine Yu whose telephone number is (703) 308-2675.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Everett Williams whose telephone number is (703) 305-1708.



Justine Yu

October 18, 2001